

DWIGHT DURAN

Name # 26571

Prison Number

THE PENITENTIARY OF NEW MEXICO
Place of Confinement

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

NOV 15 1977

[Signature] CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DWIGHT DURAN ET AL, Plaintiff
(Full Name)

v.

JERRY APODACA,

GOVERNOR, ET AL, Defendant(s)

CIVIL CASE NO. 77-721 P

(To be supplied by the Clerk
of the district court)

CIVIL RIGHTS COMPLAINT PUR-
SUANT TO 42 U.S.C. 1983

A. JURISDICTION

1) DWIGHT DURAN, is a citizen of NEW MEXICO
(Plaintiff) (State)
who presently resides at P.O. BOX 1059, SANTA FE, NEW MEXICO
(Mailing Address or Place of Confinement)

2) Defendant JERRY APODACA is a citizen of
(Name of First Defendant)
SANTA FE, NEW MEXICO and is employed as GOVERNOR FOR THE STATE.
(City, State) (Position and Title, if any)
At the time the claim(s) alleged in this complaint arose was this
defendant acting under color of state law? Yes ☒ No ☐. If your
answer is "Yes", briefly explain: GOVERNOR JERRY APODACA IS
RESPONSIBLE FOR THE OVERALL ORDERLY RUNNING OF STATE INSTITUTIONS

3) Defendant TOMMY ANAYA is a citizen of
(Name of Second Defendant)
SANTA FE, NEW MEXICO and is employed as ATTORNEY GENERAL FOR THE STATE.
(City, State) (Position and title, if any)
At the time the claim(s) alleged in this complaint arose was this
defendant acting under color of state law? Yes ☒ No ☐. If your
answer is "Yes", briefly explain: HE IS RESPONSIBLE FOR THE
CRIMINAL JUSTICE SYSTEM OF THE STATE OF NEW MEXICO

(Use the back of this page to furnish the above information for
additional defendants)

Continued on back of page

Plaintiffs, Continued

1. (b) RONNIE DURAN, P.N.M. # 26293, is a citizen of New Mexico who presently resides at P.O. Box 1059, Santa Fe, New Mexico.
2. (c) Manuel Lujan, P.N.M. # 23288, is a citizen of New Mexico who presently resides at P.O. Box 1059, Santa Fe, New Mexico.

Defendants, Continued

- 4) Defendant Ed Mabe is the Secretary of Corrections for the State of New Mexico. As Secretary of Corrections, he has general supervision of the New Mexico State Penitentiary.
- 5) Defendant Clyde J. Malley is Warden of the New Mexico State Penitentiary. He has general supervision and control of the prison.

All Defendants are Sued jointly, separately and ~~individually~~, in their official capacities.

(A.) The Psychological Services are under effort to meet the needs of a great majority of individual inmates. In fact, some inmates have been denied parole and have been instructed to pursue psychological therapy. Some of the inmates had been approved to undergo psychological therapy in federally funded institutions and programs; they had applied for psychological therapy in the before appearing before their scheduled parole board hearings, and their requests have been kept in the waiting list without much results, or without any results whatsoever.

(B.) Self-improvement programs such as U.S. Jaycees, Sea Archers & Aqualung, Narcotics Anonymous etc. have been discontinued at the Penitentiary of New Mexico due to the overcrowded inmate population and lack of staff administration. The institution's organizations used to promote positive rehabilitative factors and contribute to motivating inmates to become productive citizens of the society.

(C.) The institutional hobby shop activities are now supposedly available to the interested participating inmate. However, the participating inmates do not have much access to the hobby shop due to the over staffed administration. The hobby shop supervisor is constantly stationed in the kitchen to insure security thus making it impossible for the inmates to make full use of the hobby shop. This is a staff for tools and materials.

Constitutional Safeguards

The right to trial and sentencing according to the U.S. Constitution is a safeguard against cruel and unusual punishment; trial and deprivation of life (identity and parole) without due process of law and without protection of the same.

Parole hearings in fact, of the inmate and his family, their friends and relatives, and the public, and the fundamental constitutional right of life, liberty and property, are being violated. Parole is being denied to inmates who are eligible for parole and who are in good behavior in prison conditions.

Constitute Cruel and Unusual Punishment. For New Mexico to disagree with recent Court rulings would be in violation of the equal protection clause.

Jurisdiction is invoked pursuant to 28 U.S.C. 1343(3); 42 U.S.C. 1983. (These are the "civil rights" statutes; if you wish to assert jurisdiction under different or additional statutes, you may list them below.)

28 U.S.C. 1343(4) And 2201 (CLASS ACTION); 42 U.S.C. 1983;
AND RULE 23 (b) (1) AND RULE 23 (b) (2) of the Federal
Rules of Civil Procedure

B. NATURE OF THE CASE

Briefly state the background of your case

Plaintiffs bring this action on their own behalf and on behalf of all other inmates of the New Mexico State Penitentiary subject to Defendant's Jurisdiction and affected by the over crowded conditions of the said institution. The Class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the Class; The Claims and defenses of Plaintiffs are typical of the Claims and defenses of the Class; and Plaintiffs will fairly and adequately protect the interests of the Class.

C. CAUSE OF ACTION

I allege that the following of my constitutional rights, privileges or immunities have been violated and that the following facts form the basis for my allegations: If necessary you may attach up to two additional pages (8 1/2" x 11") to explain any allegation or to list additional supporting facts.

Count I: Plaintiffs allege that the over crowded conditions
of the Penitentiary of New Mexico is in a hazardous situation
and is depriving them and their Class members of their fundamental
Constitutionally protected right and is in violation of the 5th,
8th, and 14th Amendments to U.S. Constitution.

Supporting Facts: (Include all facts which you consider important, including names of persons involved, places and dates. You should state the facts clearly and in your own words without citing cases or law.)

- 1.) Plaintiffs Duron, DURAN and Lujan are inmates in-and-within the premises of the New Mexico State Penitentiary.
- 2.) Plaintiffs allege that as members of the inmate population, they are experiencing undue cruel and unusual punishment and are being denied fundamental Constitutional safeguards as guaranteed by the fifth, eighth and fourteenth Amendments to the U.S. Constitution.
- 3.) Plaintiffs allege that the New Mexico Penitentiary's inmate population is over-crowded, the following are facts supporting this allegation:

1) The NEW Mexico State Penitentiary's maximum housing capacity is about Seven-hundred (700) "heads" AND SPECIFICALLY CONSTRUCTED NOT TO HOUSE MORE THAN THAT NUMBER OF "HEADS"

b) Presently, The Penitentiary of NEW Mexico inmate population at SANTA FE NEW Mexico is Close to Twelve hundred (1200) heads.

c) Therefore, Plaintiffs allege that the inmate population of the New Mexico State Penitentiary is jeopardizing the health AND well being of its inmates due to the following reasons:

4.) The inmate population is about five hundred (500) heads over its maximum housing standards, and it:

a) Jeopardizes the health AND well being of its inmates because such a large number of inmates in a cramped - compact place, such as the said institution, promotes AND motivates contagious diseases to the class members AND is in violation of the fire code AND standards.

b) The Penitentiary of New Mexico staff of the Medical services is understaffed AND under equipped to meet the medical needs AND demands of the over crowded inmate population.

c) A diet line is not available to inmates who are inflicted with disease such as sugar diabetes. Unfortunately, those diseased inmates have to eat the food which is served in the main line to the general population, regardless of the effects which could mean death.

d) Emergency medication AND for hospitalization is not available to inmates on certain occasions.

e) That the food service personnel is under equipped to adequately prepare the food for the over crowded population of the general inmate population. the food is being healthily prepared AND, at times, is unsanitary AND inedible.

f) The unsanitary conditions are present due to the over crowded population. Presently, inmates are sleeping on the floor; some, without blankets on pillows.

5) Plaintiffs allege that their fundamental right for rehabilitation is being denied due to the over crowded population AND inadequate psychological services AND inadequate rehabilitative programs which do not meet the needs AND demands of the individuals. The following are facts relating to this allegation:

Count II: _____

Supporting Facts:

Count III: _____

Supporting Facts: